

The Constitutional Court of Bosnia and Herzegovina, sitting, in accordance with Article VI(3)(c) of the Constitution of Bosnia and Herzegovina, Article 57(2)(b), Article 59(1) and (2) and Article 61(2), (3) and (4) of the Rules of the Constitutional Court of Bosnia and Herzegovina – Revised text (*Official Gazette of Bosnia and Herzegovina*, 94/14), in Plenary and composed of the following judges:

Mr. Mirsad Ćeman, President,

Mr. Mato Tadić, Vice-President

Mr. Zlatko M. Knežević, Vice-President

Ms. Margarita Tsatsa-Nikolovska, Vice-President

Mr. Tudor Pantiru,

Ms. Valerija Galić,

Mr. Miodrag Simović,

Ms. Seada Palavrić.

Mr. Giovanni Grasso,

Having deliberated on the request filed by the **County Court in Banja Luka (Judge Milan Blagojević)**, in case no. **U 2/17**, at its session held on 1 June 2017, adopted the following

DECISION ON ADMISSIBILITY AND MERITS

The request lodged by **the County Court in Banja Luka (Judge Milan Blagojević)** is hereby granted.

It is hereby established that Article 93(4) of the Law on Enforcement Procedure of Republika Srpska (*Official Gazette of the Republika Srpska*, 59/03, 85/03, 64/05, 118/07, 29/10, 57/12, 67/13 and 98/14) is not compatible with Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Pursuant to Article 61(4) of the Rules of the Constitutional Court of Bosnia and Herzegovina, the National Assembly of the Republika Srpska is ordered to harmonize Article 93(4) of the Law on Enforcement Procedure of Republika Srpska (*Official Gazette of the Republika Srpska*, 59/03, 85/03, 64/05, 118/07, 29/10, 57/12, 67/13 and 98/14) with Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms within a time limit not exceeding six months from the date of publication of this Decision in the *Official Gazette of Bosnia and Herzegovina*.

Pursuant to Article 72(5) of the Rules of the Constitutional Court of Bosnia and Herzegovina, the National Assembly of Republika Srpska is ordered to inform the Constitutional Court of Bosnia and Herzegovina about the measures taken in order to

enforce this Decision within the time limit referred to in the previous paragraph.

This Decision shall be published in the *Official Gazette of Bosnia and Herzegovina*, the *Official Gazette of the Federation of Bosnia and Herzegovina*, the *Official Gazette of the Republika Srpska* and the *Official Gazette of the Brčko District of Bosnia and Herzegovina*.

REASONING

I. Introduction

1. On 13 March 2017, the County Court in Banja Luka (Judge Milan Blagojević; "the applicant") lodged a request with the Constitutional Court of Bosnia and Herzegovina ("the Constitutional Court") for review of the constitutionality of Article 93(4) of the Law on Enforcement Procedure of Republika Srpska (*Official Gazette of the Republika Srpska*, 59/03, 85/03, 64/05, 118/07, 29/10, 57/12, 67/13 and 98/14).

II. Proceedings before the Constitutional Court

2. Pursuant to Article 23 of the Rules of the Constitutional Court, on 16 March 2016 the National Assembly of the Republika Srpska ("the RS National Assembly") was requested to submit a reply to the request.

3. On 11 April 2017, the RS National Assembly submitted the reply to the request.

III. Request

a) The facts of the case in respect of which the request was filed

4. The applicant alleged that the enforcement proceedings were pending before the applicant as a second-instance court which was called on to decide an appeal filed against the ruling of the Basic Court in Gradiška ("the Basic Court"), no. 72 0 I 019851 15 I 2 of 31

October 2016, whereby an appeal filed by enforcement debtor P.D. against the ruling on award of the Basic Court, no. 72 0 I 019851 11 I of 24 August 2016, had been rejected as untimely. In particular, according to the mentioned ruling on award, dated 24 August 2016, the real property of enforcement debtor P.D., as precisely described in the enacting clause of that ruling, had been awarded and handed over to the purchaser – the creditor, namely Bobar banka A.D. Bijeljina, which was undergoing the process of liquidation. According to the legal remedy clause, an appeal against that ruling was allowed within a time limit of eight days, where the time-limit for filing the appeal commenced running upon the expiry of the third day from the date of posting the ruling on award on the notice board of the court. The Basic Court, in a ruling dated 31 October 2016, rejected as untimely the appeal of enforcement debtor P.D. against the ruling on award.

5. The applicant alleged that it followed from the reasons for the ruling of 31 October 2016 that the mentioned ruling on award of real property had been delivered to all participants in the procedure by way of posting it on the notice board of the first instance court on 29 August 2016. The first-instance court therefore found that the time-limit for lodging the appeal had commenced running on 2 September 2016 and that it had expired after 9 September 2016. The reason for this is the fact that the mentioned provision of Article 93(4) of the Law on Enforcement Procedure of Republika Srpska stipulates that the ruling on award of real property shall be considered as delivered to all persons upon expiry of the third day from the date when it was posted on the notice board of the court, and the time-limit for lodging an appeal against that ruling commenced running since then, which is also stipulated by the same provision. In the present case, enforcement debtor P.D. lodged an appeal against the ruling on award on 25 October 2016, which was the reason why the first-instance court rejected it as untimely in a ruling issued on 31 October 2016. The enforcement debtor lodged an appeal against that ruling on rejection, which is to be decided by the applicant in the case registered under no. 72 0 I 019851 16 Gž 2.

b) Allegations from the request

6. The applicant is of the opinion that the provision of Article 93(4) of the Law on Enforcement Procedure of the Republika Srpska (“the contested provision”) is not compatible with Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and Article 14(1) of the International Covenant on Civil and Political Rights (“the ICCPR”). In

particular, the applicant alleges that it is indisputable and, moreover, it is evident that the issue at hand is in direct connection with the right to a fair trial before the court and that right is guaranteed by the previously stated provisions of the Constitution of Bosnia and Herzegovina, European Convention and ICCPR. He further alleges that there is no fair trial if there is no access to court and that access must be of substantive significance and not of formal significance. He also notes that certain limitations on access to court exist in jurisprudence, for example, for the reason of statute of limitations or limitation on access to court imposed on juveniles and mentally ill persons. However, such limitations must not endanger or, let alone, violate the very essence of the right to a fair trial. The applicant concludes that the contested provision is in violation of the very essence of the right to a fair trial, in absence of which there is no fair trial in any court proceedings, including the enforcement proceedings. In his opinion, there is no fair trial where the legislator, like in the instant case, prescribes that the court decision (on award), whereby the former owner of the real property has lost his ownership right by way of that real property being awarded to another person, is not delivered to any of them in person but is posted on the notice board of the court. In such a situation, in the applicant's opinion, the law imposes not only disproportionate but also unjust and illegitimate request on those persons who have to watch the notice board all the time in order to be informed about such a court decision. If they do not do so they will lose, as alleged by the applicant, according to the valid law "arrangement", the right to appeal. Thus, in the opinion of the applicant, they will be deprived of the very essence of the right to trial in the unlawful and blatant manner and, consequently, of the right to a fair trial.

7. The applicant holds that the contested provision is incompatible with those hierarchically higher legal provisions, and it is also irrational given the previously presented arguments. Illegality and irrationality of the contested provision, as alleged by the applicant, cannot be made up by the fact that the conclusion on the sale of the real property has been previously delivered to the participants in these proceedings. Namely, the ruling on award of the real property is a court decision against which, unlike the conclusion (Article 12(6) of the Law on Enforcement Procedure of the Republika Srpska), an appeal is allowed in accordance with the law, and if so, it means that the prior delivery of that decision (the ruling on award of the real estate) to the parties to the proceedings is only inherent in the right to a fair trial, instead of establishing an unconstitutional fiction implying that it is enough just to post that decision on the notice board of the court to consider, upon expiry of three days from that

moment, that it has been delivered to all participants in the proceedings, including those whose property (civil) rights are decided upon in the ruling (*unconstitutional fiction*).

8. In conclusion, the applicant notes that the only inherent in the right to a fair trial is to stipulate by the law that such court decisions shall be delivered to the parties to the proceedings, whose rights and legal interests are decided upon in such decisions and not to stipulate that the court decision shall be considered as delivered by posting it on the notice board of the court and that the time-limit for filing an appeal against such a decision commences running upon the expiry of certain number of days (three days in this case) from the day of posting it on the notice board. Any other interpretation, in the applicant's opinion, would amount to violation of the human and civil right to a fair trial, which cannot be justified by any public interest.

c) Reply to the request

9. In its reply to the request the RS National Assembly notes that the applicant's allegations that the contested provision is incompatible with Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6 of the European Convention are unfounded. It further alleges that the legislator has the full right and obligation to define the legal framework for the conduct of legal subjects in a specific case related to the enforcement procedure and that it did so by enacting the RS Law on Enforcement Procedure. The legislator defines such legal frameworks by being guided by the public interest and reasons related to suitability. The enforcement procedure, as further alleged, constitutes a comprehensive implementation of forcible collection of claims based on the credible enforcement documents. While observing the contested provision from the aspect of a particular procedure, the RS National Assembly holds that it is noticeable that the law arrangement in question meets the requirements of proportionality between the interests of individuals and public interest.

10. It further alleges that the rules related to the manner of delivery prescribed by the contested provision are also provided for in other regulations, notably the Law on Bankruptcy (*Official Gazette of RS*, 16/16), which regulates that in case of sale – converting real property into money – it is carried out in accordance with the rules of the RS Law on Enforcement Procedure. In this connection, as further alleged, Article 25(2) of the Law on Bankruptcy prescribes that delivery is considered completed by posting it on the notice board of the court, web site of the court and *Official Gazette of RS*, including the case in respect of which the law

prescribes personal delivery. Paragraph 6 of the mentioned Article stipulates that delivery is considered completed upon the expiry of five days from the date of publication. Furthermore, paragraph 7 of Article 156 of the Law on Bankruptcy, which regulates the procedure for converting real property into money, stipulates that if the assembly of creditors refuses to determine the terms and conditions of liquidation of the debtor's real property, the real property shall be liquidated in accordance with the rules related to the enforcement procedure if it is not contrary to the provisions of the mentioned law.

11. The RS National Assembly further alleges that the legislator took also into account the fact that the conclusion on sale of real property (Article 82 of the RS Law on Enforcement Procedure) shall be delivered to the parties, the persons who have priority right to have their claims settled or the persons who have the same priority right as the party seeking the enforcement, the persons who have the registered pre-emption right or legal pre-emption right and the relevant authority of the tax administration. Thus, the conclusion on sale is to be delivered to all interested persons so that Article 93(1) of the mentioned law stipulates that after the price has been deposited, the court issues a ruling to award the real property to the purchaser (the ruling on award). Such a ruling determines that the sold real property shall be delivered to the purchaser and orders the relevant property to register the ownership right under the purchaser's name. It outlines that the ruling on award is not an act wherein one's right to property is decided on the merits but rather an act to execute a decision taken by the relevant authority and to enable the sale in the enforcement procedure. An objection against the mentioned ruling is not allowed. However, an appeal against it is allowed. The ruling is considered as delivered to all participants by the expiry of the third day from the date of its publication on the notice board. The RS National Assembly considers that the contested provision has a practical significance as the completion of the enforcement procedure would be brought into question if it was impossible for the mentioned ruling to be delivered to all parties. It outlines that the RS Law on Enforcement Procedure offers favourable and appropriate solutions which are not incompatible with the Constitution of Bosnia and Herzegovina and European Convention. Taking into account the presented facts, the RS National Assembly proposed that the applicant's request for review of constitutionality of the contested provision be dismissed as it is not grounded on the Constitution of Bosnia and Herzegovina, European Convention and Article 14 of the ICCPR.

IV. Relevant Laws

12. The **Law on Enforcement Procedure** *Official Gazette of the Republika Srpska*, nos. 59/03, 85/03, 64/05, 118/07, 29/10, 57/12, 67/13 and 98/14), as relevant, reads:

Article 1

Contents of the Law

(1) *This Law shall govern the procedure pursuant to which the courts of Republika Srpska shall enforce claims based on enforcement and authentic documents (hereinafter “the enforcement procedure”), unless otherwise prescribed by a separate law.*

(2) *The provisions of this Law shall not be applied to the enforcement proceedings stipulated by separate law.*

Article 5(1)

Immediacy and Sequence of Actions

In the enforcement procedure the Court shall act without delay.

Article 10(1)

Delivery

(1) *The ruling upon motion for enforcement, ruling upon objection raised against the ruling on enforcement, ruling to impose a fine and conclusion referred to in Article 37 of this Law shall be delivered in accordance with the rules related to the delivery of the lawsuit referred to in the Civil Procedure Code.*

Article 12(4)

Legal remedies

(4) *An appeal against the ruling issued upon objection may be filed within a time limit of eight days from the date of delivery of the ruling. The second-instance court shall decide on the appeal.*

Article 68

Enforcement Actions

The enforcement against immovable property shall be carried out through the registration of enforcement in land books, through the determination of the value of immovable property, through the sale of immovable property and through the settlement of claims of the party seeking the enforcement against the amount obtained through the sale.

Article 80(1)

The Manner of Appraisal

The Court shall determine the manner of appraising real property by issuing a conclusion immediately after it issues the decision on enforcement, and if necessary, the Court shall hold a hearing with the parties before issuing the conclusion.

Article 82(1), (3) and (6)

Conclusion on Sale

(1) After conducting a proceeding for determining the value of real property, the court shall issue a conclusion on sale of real property, wherein it determines the value of the property and the manner and conditions as well as the time and place of the sale if the sale is being carried out at a public auction.

(...)

(2) The conclusion on sale shall be posted on the Court's notice board and other appropriate ways as the court may decide.

(...)

(6) The conclusion on sale shall be delivered to the parties, to the persons that have the priority right to have their claims settled or the same priority right as the party seeking the enforcement, to the persons who have a registered or legal pre-emption right and to the relevant body of the tax administration.

Article 92 (1) and (8)

Depositing the Price

(1) *The person with the highest offer at the hearing shall pay the total selling price reduced by the security deposit by depositing the price into the court within a time-limit which is determined by the court and which cannot exceed 30 days from the date of publication of the conclusion referred to in Article 90(6) of this court on the notice board.*

(2) *If the party seeking the enforcement is a purchaser and there are no other persons whose claims are to be settled against the selling price before him/her, he/she shall not be obliged to deposit the price into the court up to the amount of his/her claims.*

Article 93

Handover of the Real Property to the Purchaser

(1) *After the price is deposited into the court, the court shall issue a ruling to award the immovable property to the purchaser (the ruling on award).*

(2) *In its ruling referred to in paragraph 1 of this Article, the Court shall determine the handover of the real property to the purchaser and shall order the land registry court to register the change in the ownership right and to delete the rights of third persons whom the ruling concerns.*

(3) *An objection against the ruling is not allowed, but an appeal is available.*

(4) *The ruling referred to in paragraph 1 of this Article shall be published on the notice board. The ruling shall be considered as delivered to all the persons to whom the conclusion is to be delivered and to all participants to the auction upon the expiry of the third day from the date on which it was posted on the notice board.*

Article 94

Protection of the Purchaser's Rights

Revocation or modification of a ruling on enforcement after the ruling on award of real property has been enforced has no effect on the purchaser's right to ownership acquired according to the provisions of Article 93 of this Law.

Article 96

Settlement of Claims of the Party Seeking the Enforcement

Commencement of Settlement

The Court shall commence paying the party seeking the enforcement immediately after the ruling on award has been issued.

V. Admissibility

13. In examining the admissibility of the present request, the Constitutional Court invoked the provisions of Article VI(3)(c) of the Constitution of Bosnia and Herzegovina.

Article VI(3)(c) of the Constitution of Bosnia and Herzegovina reads as follows:

c) The Constitutional Court shall have jurisdiction over issues referred by any court in Bosnia and Herzegovina concerning whether a law, on whose validity its decision depends, is compatible with this Constitution, with the European Convention for Human Rights and Fundamental Freedoms and its Protocols, or with the laws of Bosnia and Herzegovina; or concerning the existence of or the scope of a general rule of public international law pertinent to the court's decision.

14. The request for review of constitutionality was submitted by the County Court in Banja Luka (Judge Milan Blagojević), which means that the request was filed by an authorised person pursuant to Article VI(3)(c) of the Constitution of Bosnia and Herzegovina (see Constitutional Court, Decision on the Admissibility and Merits no. *U 5/10* of 26 November 2010, paragraphs 7 through 14, published in the *Official Gazette of Bosnia and Herzegovina*, 37/11). Bearing in mind the provisions of Article VI(3)(c) of the Constitution of Bosnia and Herzegovina and Article 19(1) of the Constitutional Court's Rules, the Constitutional Court establishes that the present request is admissible as it was submitted by an authorised person and because there is no single reason under Article 19(1) of the Constitutional Court's Rules rendering this request inadmissible.

VI. Merits

15. The applicant requested the Constitutional Court to decide on the compatibility of the contested provision of the RS Law on Enforcement Procedure with Article II(3)(e) of the

Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention and Article 14(1) of the ICCPR.

16. The contested provision of the RS Law on Enforcement Procedure reads as follows:

(4) The ruling referred to in paragraph 1 of this Article shall be published on the notice board. The ruling shall be considered as delivered to all the persons to whom the conclusion is to be delivered and to all participants to the auction upon the expiry of the third day from the date on which it was posted on the notice board.

Right to a fair trial

17. Article II(3)(e) of the Constitution of Bosnia and Herzegovina, as relevant, reads:

All persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms referred to in paragraph 2 above; these include:

[...]

(e) The right to a fair hearing in civil and criminal matters, and other rights relating to criminal proceedings.”

18. Article 6(1) of the European Convention, as relevant, reads:

(1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. [...]

19. The Constitutional Court observes that the applicant challenges the contested provision as the ruling on award is not delivered to the parties to the proceedings in person nor is it delivered so to any other participant whose rights and duties have been decided on, and, moreover, that the mentioned ruling is considered as delivered to the persons to whom it is to be delivered in accordance with the law after the expiry of three days from the date when it was posted on the notice board and that the time-limit for filing an appeal commences to run on that date. The Constitutional Court further note that the ruling on award shall be delivered to *all the persons to whom the conclusion is to be delivered and to all participants to the auction*. Furthermore, according to Article 82(6) of the RS Law on Enforcement, *the conclusion on sale shall be delivered to the parties, to the persons that have the priority right*

to have their claims settled or the same priority right as the party seeking the enforcement, to the persons who have a registered or legal pre-emption right and to the relevant body of the tax administration, which means in the present case that the ruling on award is to be also delivered to the mentioned persons.

20. The Constitutional Court notes that the RS National Assembly, which enacted the contested provision, alleged in its reply that as a legislator it was guided by the public interest and reasons for purposefulness. In this connection, the Constitutional Court observes that the public interest is reflected in the need to complete the enforcement proceedings in the prompt, efficient and cost-effective manner, on the one hand, and without placing an excessive burden on the persons having the interest and right to file an appeal against a ruling on award, on the other hand.

21. The Constitutional Court notes that the request in question raises the issue of procedural guarantees of the parties in relation to the right to file an appeal, on the one hand, and the principle of promptness of the enforcement procedure, on the other hand, meaning that the forcible collection of claims upon request of the party seeking the enforcement is executed within the shortest possible time limit. However, although the principle of promptness is particularly noticeable in the enforcement procedure, the mentioned principle, in the opinion of the Constitutional Court, could not be interpreted as prevailing over the essence of the right to a fair trial within the meaning of the fundamental procedural guarantees of the parties to the court proceedings.

22. The provision of Article 5 of the RS Law on Enforcement Procedure prescribes that the basic principle of the enforcement procedure is *the principle of promptness*. The mentioned principle in the enforcement procedure is reflected in the prescription of shorter time-limits for undertaking certain enforcement actions either by the parties or by the court. Essentially, this relates to the requirement expressed in the principles of cost-effectiveness and efficiency of the enforcement procedure and timeliness of providing legal protection to the party seeking the enforcement. The hitherto theory has emphasized that the promptness in taking actions is first of all in the interest of the party seeking the enforcement and indirectly the enforcement debtor because of the decrease in costs and prompt removal of uncertainty of the legal position of the legal subject.

23. The Constitutional Court referred to the mentioned principle in its decisions wherein it emphasized that the enforcement procedure, due to its nature, requires prompt action as prescribed by Article 5 of the RS Law on Enforcement Procedure (see Constitutional Court, *AP 5668/14* of 14 May 2015, para 26, *AP 5401/14* of 24 April 2015, para 24, *AP 5156/14* of 17 March 2015, available at www.ustavnisud.ba). In the mentioned cases, the Constitutional Court found a violation of the right to a fair trial under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention as the enforcement proceedings were not concluded within the reasonable time-limit.

24. However, despite the mentioned principle of promptness, which is inviolable in the enforcement procedure, the question raised before the Constitutional Court relates to the procedural guarantees in respect of the right to appeal under Article 93(3) of the RS Law on Enforcement Procedure (*An objection against the ruling is not allowed but an appeal is available*). In this connection, the Constitutional Court notes that “the right to file an appeal with the court of higher instance is not defined nor does Article 6(1) of the European Convention imply it”. However, if the appeal is available and if it was filed, and the court of that instance is called upon to establish the facts, the first paragraph of Article 6 of the European Convention will be applicable (see ECtHR, *Delcourt v. Belgium*, judgment of 17 January 1970, Series A, no. 11, pp. 14-15). The Constitutional Court notes that although Article 6(1) of the European Convention does not imply the right to file appeal with a higher instance court, if that right is not prescribed by the law, the guarantees enabling its consistent application must be secured through clear and precise norms.

25. The European Court of Human Rights noted in the judgment of *Muscat v. Malta* that Article 6 of the Convention does not compel the Contracting States to set up courts of appeal. However, where such courts do exist, the requirements of Article 6 must be complied with, so as for instance to guarantee to litigants an effective right of access to court for the determination of their “civil rights and obligations”. The “right to court”, of which the right of access is one aspect, is not absolute; it is subject to limitations permitted by implication, in particular where the conditions of admissibility of an appeal are concerned, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard. However, these limitations must not restrict or reduce a person’s access in such a way or to such an extent that the very essence of the right is impaired (see ECtHR, *Muscat v. Malta*, judgment of 17 July 2012, para 42). The rules governing the formal steps to be taken and the time-limits to be complied with in lodging an appeal are aimed at ensuring the proper

administration of justice and compliance, in particular, with the principle of legal certainty. That being so, the rules in question, or the manner in which they are applied, should not prevent litigants from using an available remedy. However, those concerned must expect those rules to be applied. It is incumbent on the interested party to display special diligence in the defence of his interests (*op. cit. Muscat v. Malta*, para 44).

26. The Constitutional Court emphasizes that legal provisions regulating time-limits have to genuinely offer a possibility for a citizen to realize his or her specific right, while the expiry thereof means the loss of the possibility to realize that right. Such a time-limit must be realistic (see, Constitutional Court, AP 1524/06 of 8 November 2007, para 33, available at www.ustavnisud.ba).

27. As to the contested provision, the Constitutional Court notes that the legislator prescribes in that provision that the ruling shall be considered as delivered to all the persons to whom the conclusion is to be delivered in accordance with the law and to all participants to the auction upon the expiry of the third day from the date on which it was posted on the notice board. Furthermore, Article 12(4) of the RS Law on Enforcement Procedure stipulates that an appeal against the ruling issued upon objection may be filed within a time limit of eight days from the delivery of the ruling. The second-instance court shall decide on the appeal. In this connection, the Constitutional Court notes that the legislator implies that all the persons who has the interest in filing an appeal against the ruling on award have the obligation to be aware of the date of expiry of the ruling on award posted on the notice board (although there are no time indications of when this would happen) in order to be informed when the time-limit for filing an appeal commences to run. Thus, posting of the ruling on award on the notice board is in fact an uncertain event in respect of which a precise date is not determined. Taking into account the fact that the ruling on award is to be issued after the price is deposited (Article 93(1) of the RS Law on Enforcement Procedure), that the prescribed time limit for depositing the price is to be determined by the court and that it cannot exceed 30 days from the date when the conclusion on sale is published (Article 92(1) of the RS Law on Enforcement Procedure), the Constitutional Court notes that in the mentioned period, which is uncertain, the interested parties are obliged to check, on a daily basis, whether the ruling is published on the notice board in order to be watchful of the time limit for filing an appeal. The Constitutional Court notes that an excessive burden was placed on all interested parties in relation to securing the procedural guarantees for filing the prescribed legal remedy due to the uncertainty of the time when the ruling on award will be posted on the notice board of the

court. Taking as a starting point the fact that the contested provision prescribes that the ruling shall be considered as delivered to all the persons to whom the conclusion is to be delivered in accordance with the law and to all participants to the auction upon the expiry of the third day from the date on which it was posted on the notice board and that there are no other elements which would render the time of publication certain or that there is no prescription that it would be determined in another appropriate manner, the Constitutional Court holds that the contested provision is not compatible with Article 6(1) of the European Convention as it does not secure procedural guarantees for filing a legal remedy. The Constitutional Court holds that posting the ruling in question on the notice board of the court, which is prescribed by the contested provision, is not disputable. However, such a provision in itself, without any determination that would indicate certainty of the date when the ruling would be posted on the notice board, and, consequently, the calculation of the time-limit within which an appeal could be filed, places an excessive burden on the parties and other participants in the proceedings that are interested in addressing an appeal.

28. Given the foregoing, the Constitutional Court holds that the contested provision is not compatible with the provision of Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention.

Other allegations

29. As to the allegation on the violation of Article 14 of the ICCPR, the Constitutional Court notes that the mentioned provision provides, *inter alia*, that *in the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled (...) by a competent (...) tribunal established by law*. Given the fact that the mentioned right essentially corresponds to the guarantees under Article II(3)(e) of the Constitution of Bosnia and Herzegovina and Article 6(1) of the European Convention and that these allegations of the applicant have already been considered in detail in this decision, the Constitutional Court holds that it is not necessary to separately examine them in relation to the mentioned provision of the ICCPR.

VII. Conclusion

30. The Constitutional Court of BiH concludes that Article 93(4) of the RS Law on Enforcement Procedure is contrary to the right to a fair trial under Article II(3)(e) and Article 6(1) of the European Convention as it provides that the ruling shall be considered as delivered to all the persons to whom it is to be delivered in accordance with the law upon the expiry of the third day from the date on which it was posted on the notice board, but it does not provide for other elements which would render the time of publication on the notice board certain in

order to secure procedural guarantees to the parties interested in filing a legal remedy prescribed by the law.

31. Having regard to Article 59(1) and (2) and Article 61(2), (3) and (4) of the Rules of the Constitutional Court, the Constitutional Court decided as stated in the enacting clause of the present Decision.

32. Pursuant to Article VI(5) of the Constitution of Bosnia and Herzegovina, the decisions of the Constitutional Court shall be final and binding.

Mirsad Ćeman
President
Constitutional Court of Bosnia and Herzegovina